

FEDERAL ELECTION COMMISSION

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FEDERAL ELECTION COMMISSION
U.S. DEPARTMENT OF JUSTICE
DEC 10 1996

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR 4428

DATE COMPLAINT FILED: August 2, 1996

DATE OF NOTIFICATION: August 9, 1996

DATE ACTIVATED: August 20, 1997

STAFF MEMBER: J. Duane Pugh Jr

COMPLAINANT:

Democratic National Committee

RESPONDENTS:

Amway Corporation

Haley Barbour

Republican National Committee and Alec Poitevent,
as its Treasurer

San Diego Convention and Tourist Bureau
d b a San Diego Convention and Visitors
Bureau

RELEVANT STATUTE(S):

2 U.S.C. § 441b(a) and (b)(2)

11 C.F.R. § 103.3(b)

11 C.F.R. § 114.1(a)(2)(viii)

11 C.F.R. § 9008.52

11 C.F.R. § 9008.53(b)(1)

INTERNAL REPORTS CHECKED:

None

FEDERAL AGENCIES CHECKED

None

I. GENERATION OF MATTER

This matter was generated by a complaint filed with the Federal Election Commission (the "Commission") by the Democratic National Committee (the "DNC") pursuant to 2 U.S.C. § 437g(a)(2). The DNC complaint alleges that in connection with the 1996 Republican National

Convention, the Republican National Committee (the "RNC") received an illegal corporate contribution from the San Diego Convention and Tourist Bureau d/b/a the San Diego Convention and Visitors Bureau ("ConVis") and that the source of ConVis's donated funds was Amway Corporation.¹ Respondents in this matter are Amway Corporation; Haley Barbour, the former chairman of the RNC; ConVis; the RNC and its treasurer. The responses that have been filed are Attachments 1 through 3.²

II. FACTUAL AND LEGAL ANALYSIS

A. Legal Standard

The Federal Election Campaign Act of 1971, as amended (the "FECA"), the Presidential Election Campaign Fund Act and the Commission's regulations provide a number of exceptions to the general prohibition of corporate contributions in connection with federal elections.³

2 U.S.C. § 441b(a) and (b)(2). Pursuant to one such exception, corporations are permitted to donate funds that may be used in connection with presidential nominating conventions, in certain circumstances. *See* 11 C.F.R. § 114.1(a)(2)(viii) (excluding activity permitted under 11 C.F.R. §§ 9008.52 or 9008.53 from the definition of corporate contributions and expenditures).

Specifically, corporations that have offices or facilities in a particular local area may contribute funds to two types of local organizations that may assist presidential nominating conventions, which are known as municipal funds and host committees. Municipal funds are separate

¹ The 1996 Committee on Arrangements for the Republican National Convention received \$12,364,000 in federal funds which represents the full entitlement established at 26 U.S.C. § 9008(b). Therefore, the Commission conducted a mandatory audit of the Committee on Arrangements and the San Diego Host Committee. 11 C.F.R. §§ 9008.11 and 9008.54.

² Mr. Barbour did not respond to the complaint.

³ Presidential nominating conventions of political parties are defined to be elections. 2 U.S.C. § 431(1)(B).

accounts established by government agencies in the area hosting a convention that may be used to promote that area by providing specified services and facilities to the convention.⁴ 11 C.F.R.

§ 9008.53. The Commission's regulations permit government agencies and municipal corporations to establish municipal funds to accept donations from local businesses (except banks), labor organizations and individuals, which may be used for expenses in connection with presidential nominating convention only for the purposes set forth at 11 C.F.R.

§ 9008.52(c)(1)(i)-(ix). *Id.* Municipal funds may not be restricted for use in connection with any particular convention. 11 C.F.R. § 9008.53(b)(1)(i). Donations to the fund must be unrestricted and may not be solicited or designated for use in connection with any particular convention.

11 C.F.R. § 9008.53(b)(1)(ii).

Additionally, corporations that have offices or facilities in a particular local area may contribute funds to a host committee that may also promote that area by assisting a convention.

11 C.F.R. § 9008.52(c). Unlike municipal funds, host committees may be restricted for use in connection with a particular convention and may accept donations similarly designated.

Compare 11 C.F.R. § 9008.52(a) *with* 11 C.F.R. § 9008.53(b)(1).

B. The Complaint

According to the DNC's complaint, Amway Corporation donated \$1.3 million to ConVis that was specifically earmarked for payment of the costs of television time to air programs concerning the 1996 Republican National Convention.⁵ DNC complaint, ¶ 12 & 23. The DNC

⁴ Specific facilities and services that host committees and municipal funds may provide to conventions are enumerated in 11 C.F.R. § 9008.52(c)(1). *See also* 11 C.F.R. § 9008.53(b)(1).

⁵ The programs that were to be broadcast, which were named "GOP-TV's Coverage of the Convention," were intended to communicate to viewers a "celebration of Republican ideas and achievements," and the coverage was to be provided by three Republican Members of Congress and a RNC party official, according to RNC News Releases quoted in and appended to the DNC's complaint. DNC complaint, ¶ 15.

complaint alleges that the RNC "had specifically solicited the Amway [Corporation] donation to [ConVis]," and that the RNC admitted referring potential donors to ConVis to fund the GOP-TV coverage of its convention. *Id.*, at ¶ 13. The DNC complaint also alleges that, if such television air time had been provided, the RNC would have received an illegal in-kind contribution from ConVis, alleging that because the communications would have been a generic party activity, at least 65% of the costs should have been paid from the RNC's federal accounts, which may not include corporate contributions. 11 C.F.R. §§ 102.5(a)(1)(i) and 106.5(b)(2)(i).

The DNC complaint alleges alternatively that if ConVis qualifies as a "separate fund or account of a government agency" under 11 C.F.R. § 9008.53, then the Commission's regulations prohibit the receipt of earmarked contributions by such funds. DNC complaint, at ¶ 21-22 (citing 11 C.F.R. § 9008.53(b)(1)(ii)).

Finally, with respect to Mr. Barbour, the DNC complaint alleges that he, acting as RNC chairman, announced GOP-TV's planned convention-related programs and stated that ConVis had paid \$1.5 million for the television air time for the programs. *See id.*, at ¶ 5, 9 and Exhibit 2 thereto.

C. The Responses

ConVis responded by noting that the DNC complaint was filed on August 2, 1996 which was "well before any of the purported transactions were to have taken place," according to ConVis. Attachment 2, at 1. ConVis admits that it "was contemplating a transaction whereby it could further showcase San Diego as a future convention site through television of the Republican National Convention." *Id.* However, ConVis maintains that "the issues raised by the [DNC] are moot, since the contemplated transaction never occurred." *Id.*

ConVis included three pieces of correspondence with its response. The first is a letter to National Media, Inc., which requests that the recipient refund ConVis's "media payment." *Id.* at 4. The letter explains that "[b]ecause the [RNC] will broadcast its own convention coverage without commercial interruption, [ConVis] will not pursue its media promotion of the City of San Diego during the 1996 Republican National Convention on the Family Channel." *Id.* The second letter of the same date is to the president of Amway Corporation, and it includes a nearly identical explanation, followed by: "Since our San Diego media promotion will not occur, we are returning your donation unless you advise us otherwise." *Id.* at 5.

The RNC response also maintains that the allegations in the DNC complaint in this matter are moot because the contribution from Amway Corporation was returned by ConVis. The RNC response states:

CONVIS did not, however, pay for the convention broadcasts on the Family Channel, nor for broadcasts on any other media outlet. Furthermore, CONVIS did not pay for any production or promotion costs relating to such convention broadcasts. Consequently, CONVIS did not make, nor did the RNC receive *any* contributions, including prohibited corporate contributions in relation to the airing of such convention broadcasts.

Attachment 1, at 2 (emphasis in original). Finally, the RNC maintains that "the DNC complaint resulted in the chilling of the fundamental First Amendment rights of CONVIS and its supporters to promote the City of San Diego during the broadcasts of the 1996 Republican National Convention." *Id.* at 2-3.

Amway Corporation states that "[t]he DNC has misconveyed the ultimate character of Amway's support." Attachment 3, at 2. Amway Corporation explains that:

[Amway] initially donated \$1.3 million to CONVIS for its media promotion efforts. However, CONVIS canceled its media plan once the Convention decided to broadcast its own convention coverage. On the return of those funds, Amway

made a donation to the San Diego Host Committee to the Republican National Convention.

Id. (citation omitted). In support of its response, Amway Corporation submitted copies of documentation related to the wire transfers of \$1,320,000 from Amway Corporation to ConVis, from ConVis to Amway Corporation, and then from Amway Corporation to the San Diego Host Committee. *Id.*, at 7. Additionally, Amway Corporation submitted an affidavit of its "Director of Governmental Affairs Washington" that states that "Amway has 166 direct distributors and 15,720 total distributors in the San Diego area" in addition to other offices and facilities in Southern California. See Attachment 3, at 5.

D. Analysis

ConVis's return of Amway Corporation's donation of \$1.32 million rendered moot any legal issues that would have arisen had ConVis put the funds to the intended uses. For example, whether ConVis would have been permitted to purchase the television airtime as proposed does not require analysis because that issue was rendered moot by the return of the funds. However, Amway Corporation did provide the funds to ConVis, and the subsequent refund does not preclude a potential finding related to the initial transaction. Therefore, whether Amway Corporation made a prohibited contribution and whether ConVis accepted a prohibited contribution must be considered.⁶

In order to determine whether Amway Corporation's donation to ConVis was a corporate contribution prohibited by 2 U.S.C. § 441b or a donation permitted pursuant to 11 C.F.R. § 114.1(a)(2)(viii), it must be determined whether ConVis qualifies as a host committee or

⁶ ConVis does not assert that its treasurer was holding the contribution while investigating its legality pursuant to 11 C.F.R. § 103.3(b)(1). Additionally, ConVis does not assert that new evidence came to its attention as described in 11 C.F.R. § 103.3(b)(2).

municipal fund. However, the definition of a host committee is not entirely distinct from the definition of a municipal fund. While some characteristics of ConVis suggest that it is a municipal fund,⁷ other characteristics of ConVis suggest that ConVis may instead be more appropriately viewed as a host committee.⁸

On September 1, 1998, the Commission considered an Audit Division memorandum regarding ConVis, in which the Audit Division recommended that the Commission determine that ConVis acted as a host committee in connection with the 1996 Republican National Convention and authorize an audit of ConVis in accordance with 11 C.F.R. § 9008.54.⁹ This

⁷ The available information shows that ConVis was founded in 1954 and is funded principally by city and county taxes for the purpose of promoting the city of San Diego as a convention and tourist center. See Attachment 4. The receipt of tax funds and the purpose of ConVis, which is not limited to the 1996 Republican National Convention, are more consistent with aspects of a municipal fund than a host committee. Additionally, ConVis's prior and continued existence is a characteristic of a municipal fund and not necessarily a characteristic of a host committee. Compare 11 C.F.R. § 9008.53(b)(1)(i) and (ii) (prohibiting restrictions to a particular convention for municipal funds and contributions to them) with 11 C.F.R. § 9008.52(a) (the absence of such a prohibition permits host committees to have a single purpose). See also Advisory Opinions 1983-29 and 1982-27 (convention cities may establish municipal funds to receive contributions provided that the fund is not established specifically to provide services for a particular convention and the contributions made to the fund are not restricted for a particular purpose).

⁸ By letter dated August 30, 1996, ConVis stated to the Commission that it may have been "require[d] . . . to register as a 'host committee' as a result of its role in the planning and execution of the 1996 Republican National Convention." See *Letter from ConVis to the Comm'n* (Aug. 30, 1996). On January 9, 1997, ConVis filed a 60 day post-convention report covering the period of July 22, 1996 through August 14, 1996. See *ConVis's FEC Form 4* (Jan. 8, 1997) (Attachment 6). However, ConVis's characterization of itself is not controlling. ConVis is a non-profit California corporation that was established in 1954 to promote the San Diego County area as a convention and visitor destination. *ConVis's Articles of Incorporation*, 1 (Oct. 20, 1954) (DNC complaint, Exhibit 4). Additionally, convention bureaus are listed as examples of host committees in the regulatory definition of host committees. 11 C.F.R. § 9008.52(a). Finally, ConVis describes itself as a "private" corporation, which suggests that it was not established by a government agency or municipal corporation pursuant to 11 C.F.R. § 9008.53. See *ConVis, About Us* (visited July 27, 1998) <<http://www.sandiego.org/about.html>>, Attachment 7.

⁹ ConVis has informed the Commission that it provided facilities and services for use in connection with the 1996 Republican National Convention. Specifically, ConVis stated that it undertook the following activities:

- Established housing services for RNC delegates, media and guests and developed housing brochure.
- Provided basic convention "meet and greet" services including signage.
- Established information center for convention attendees and assisted in training of all convention volunteers.
- Contributed funds for various activities undertaken by the San Diego Host Committee.
- Coordinated contributions and expenditures for program providing for youths to participate in convention-related activities.

Office concurred with the Audit Division's recommendations that the better course was to consider ConVis a host committee, based on the reasons noted above: convention bureaus are listed in the regulatory definition as an example of a host committee; ConVis is a private organization; and ConVis registered as a host committee. The Commission approved the Audit Division's recommendations and determined that ConVis acted as a host committee for the 1996 Republican National Convention and authorized an audit of ConVis. *See* FEC Certification, Agenda Doc. No. X98-45 (Sept. 2, 1998).

As a host committee, ConVis is not subject to 11 C.F.R. § 9008.53(b)(1)(ii), which prohibits municipal funds from accepting or soliciting restricted or designated donations. Although it appears that Amway Corporation's donation was designated for a particular use in connection with the 1996 Republican National Convention, host committees are permitted to accept designated donations. Because it appears that Amway Corporation's donation to ConVis complied with the requirements of 11 C.F.R. § 9008.52,¹⁰ the donation is not a prohibited corporate contribution or expenditure pursuant to 11 C.F.R. § 114.1(a)(2)(viii). Therefore, this Office recommends that the Commission find no reason to believe that any of the respondents violated any statute or regulation within the Commission's jurisdiction.

With respect to the Republican National Committee, the DNC complaint challenges the uses to which the RNC intended to devote the in-kind contribution from ConVis, alleging that at

Attachment 5, at 3.

¹⁰ Amway Corporation explains that it distributes its products through a network of independent distributors. *See* Attachment 3, at 1. It appears that Amway Corporation's claim that it has "a substantial local presence in the San Diego metropolitan area" is demonstrated by its 166 direct distributors and 15,720 total distributors in the San Diego area. Section 9008.52(c)(2) of the Commission's regulations provides that any business (including *inter alia* licensed dealers) with offices or facilities located within the Metropolitan Area of the convention city shall be considered local for purposes of 11 C.F.R. § 9008.52. Thus, it appears that Amway Corporation can be considered a local business with respect to the 1996 Republican National Convention in San Diego, California.

least 65% of the costs of the proposed programming should have been paid from the RNC's federal accounts pursuant to 11 C.F.R. §§ 102.5(a)(1)(i) and 106.5(b)(2)(i). However, the RNC did not receive the proposed contribution. The documentation submitted establishes that ConVis returned the funds to Amway Corporation.¹¹ Therefore, this Office recommends that the Commission find no reason to believe that the Republican National Committee and Alec Poitevint as its treasurer violated the statutes or regulations under the Commission's jurisdiction.

Finally, the complaint alleges that Mr. Barbour, in his role as chairman of the Republican National Committee, announced the proposed GOP-TV programming related to the 1996 Republican National Convention. Mr. Barbour's alleged actions of merely announcing the proposed programming is not an acceptance of the contribution from Amway Corporation. Furthermore, there is no information that Mr. Barbour was involved in the acceptance or receipt of the contribution from Amway Corporation. Therefore, this Office recommends that the Commission find no reason to believe that Haley Barbour violated the statutes or regulations under the Commission's jurisdiction for the reasons described in the complaint in this matter.

¹¹ As noted, Amway Corporation states that it subsequently provided \$1.32 million to the San Diego Host Committee. See Attachment 3, at 2. It also appears that the San Diego Host Committee did not pay for any of the television airtime related to GOP-TV's coverage of the convention. Instead, the airtime costs were paid by the RNC and the 1996 Committee on Arrangements for the Republican National Convention. See FEC. Report of the Audit Division on 1996 Committee on Arrangements for the Republican National Convention, 39-42 (June 25, 1998).

III. RECOMMENDATIONS

1. Find no reason to believe that the San Diego Convention and Tourist Bureau d/b/a the San Diego Convention and Visitors Bureau or Amway Corporation violated any statute or regulation within the Commission's jurisdiction for the reasons described in the complaint in this matter and close the file with respect to the San Diego Convention and Tourist Bureau d/b/a the San Diego Convention and Visitors Bureau and Amway Corporation.

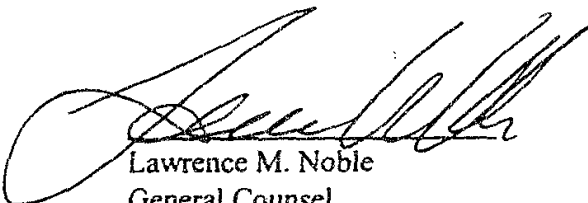
2. Find no reason to believe that the Republican National Committee and Alec Poitevint, as its treasurer, violated any statute or regulation within the Commission's jurisdiction for the reasons described in the complaint in this matter and close the file with respect to the Republican National Committee and Mr. Poitevint.

3. Find no reason to believe that Haley Barbour violated any statute or regulation within the Commission's jurisdiction for the reasons described in the complaint in this matter and close the file with respect to Mr. Barbour.

4. Approve the appropriate letters.

Date

12/17/98


Lawrence M. Noble
General Counsel

Attachments:

- 1 Response of the Republican National Committee
- 2 Response of the San Diego Convention and Tourist Bureau
- 3 Response of Amway Corporation
- 4 Dun & Bradstreet Inc. Report on ConVis
- 5 Letter from ConVis to the Commission (Aug. 30, 1996)
- 6 ConVis's FEC Form 4 (Jan. 8, 1997) and cover letter
- 7 ConVis Homepage printout